

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-174

March 23, 1998

WINSTAR WIRELESS, INC.  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Switchless  
Reseller Interexchange Telephone  
Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE INTEREXCHANGE  
RESALE SERVICE AND  
APPROVING SCHEDULE OF  
RATES AND TERMS AND  
CONDITIONS

WELCH, Chairman; NUGENT and HUNT, Commissioners

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In this Order, the Commission grants WinStar Wireless, Inc. (WinStar or Company) the authority to provide switchless resale interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules as filed on March 4, 1998 (pp. 1-15) Pursuant to Chapter 280, §§ 11 and 12, we exempt WinStar from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On March 4, 1998, applied for authority to operate in Maine pursuant to 35-A M.R.S.A. §§ 2102 and 2105. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and

advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting WinStar the authority to provide interexchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). Winstar's application provides reasonable information indicating that its financial and management capabilities are adequate to provide interexchange services in Maine.

## **II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions filed by WinStar to go into effect. WinStar used the Commission's expedited process for approval. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms and conditions and find that they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Winstar's terms and conditions and the Commission's Rules or a statute, the rule or statute will govern.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Winstar's services and rates in the market provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by WinStar to go into effect.

## **III. WAIVER OF PAYMENT OF ACCESS CHARGES**

Our approval of Winstar's application to provide interexchange service in Maine is conditioned on the payment of access charges to New England Telephone and Telegraph Company d/b/a Bell Atlantic as Access Administrator for the State of Maine. Because the Commission's Chapter 280 requires that each interexchange carrier pay applicable access charges, the chapter ordinarily requires both an underlying carrier and a switchless reseller<sup>1</sup> to pay access charges for the same call. Switchless

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<sup>1</sup>For purposes of applying the access charge waiver, we define switchless resellers as entities that do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not

resellers may avoid double payment of access by asking the Commission to waive certain sections of Chapter 280.

The Commission has determined that WinStar is a switchless reseller. Using the Commission's standard Waiver Request Form (attached to this Order), the Company has asked the Commission to waive the requirement of Chapter 280 that requires it to pay access charges, subject to the conditions and requirements described on the Waiver Request Form. We find that the granting of the waiver upon those conditions is reasonable and grant the waiver subject to the stated conditions. WinStar has stated that WorldCom will be its underlying carrier from which it purchases services that it resells but it has not filed WorldCom's certification form (Attachment 4-A). Winstar shall file this form by April 15, 1998. WorldCom is authorized by the Commission to provide intrastate interexchange service.

WinStar shall inform the Commission and the New England Telephone and Telegraph Company d/b/a Bell Atlantic as the Access Administrator for the State of Maine, immediately if there is any change in its operations that will result in its carrying or switching any of its own traffic. In addition, WinStar shall notify the Commission if it changes its underlying carrier, within 10 days following the change.

#### **IV. OTHER WAIVERS; REPORTING REQUIREMENTS**

Pursuant to sections 11(A) and 12(A) of Chapter 280, WinStar is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. However, as required by Chapter 280, § 11(A), WinStar must report its annual intrastate gross operating revenues and its annual intrastate minutes of use for the purpose of determining its regulatory assessment.<sup>2</sup> Pursuant to Chapter 280, § 11(B), WinStar

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records

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plan to use that switch to carry Maine traffic, is a switchless reseller.

<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

shall be maintained for a minimum of 2  
calendar years.

Pursuant to Chapter 280, § 12, the exemption from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

#### **V. OTHER REQUIREMENTS**

WinStar shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 6. The currently applicable annual interest rate on late payment charge is 16.50%, or a monthly rate of 1.281%, as discussed in Attachment 1. The Company shall lower its late payment interest rate to comply with our Chapter 870.

#### **VI. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of WinStar Wireless, Inc. to provide interexchange service throughout the State of Maine;

2. Approve Winstar's proposed Terms and Conditions and Rate Schedules (pages 1-15); those Schedules shall be effective on March 23, 1998;

3. Grant Winstar's Request for Waiver of the requirement under certain sections of Chapter 280 that it pay access charges subject to the conditions and requirements stated on the attached Waiver Request Form. WinStar shall immediately inform the Commission and the Access Administrator if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic. WinStar shall notify the Commission of any change in its underlying carrier within 30 days following the change;

4. Exempt WinStar from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

5. Exempt WinStar from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but WinStar shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a

controlling interest of WinStar or of any entity that owns more than 50% of WinStar. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), WinStar shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. WinStar shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, WinStar shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Direct that WinStar shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers. The Company shall comply with Chapter 870 and the Administrative Director shall correct the Company's official tariff pages to indicate a monthly late payment interest rate of 1.281%.

Dated at Augusta, Maine this 23rd day of March, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:    Welch  
   Hunt

Nugent        ABSENT